

October 20, 2004

Michael R. Hamm, Director of
Enforcement
MN Dept. of Natural Resources
500 Lafayette Rd.
St. Paul, MN 55155-4047

RE: In the Matter of ORV Operation Civil Citation #82166 Issued to Keith Lee
Stoneburner;
OAH Docket No. 6-2000-16164-2

Dear Director Hamm:

On October 18, 2004, I conducted an Administrative Hearing on the appeal of this citation issued to Mr. Stoneburner by Conservation Officer Kathy Larson. The hearing took place at Mr. Stoneburner's home north of Duluth, and included a site visit to the location of the incident. The entire process took approximately 45 minutes, and the record closed at the end of the hearing.

I am recommending to the Commissioner that the issuance of the citation be **AFFIRMED**, for the reasons set forth below.

On Saturday, August 14, 2004, at approximately 5:30 p.m., Keith Stoneburner was driving his ATV on County Road 256. He was driving in a southerly direction, having left his house (which is on County Road 256) and proceeding toward the intersection of County Road 256 and County Road 44. His house is about .7 mile from the intersection. He was driving in the middle of the regular driving lane, in the same location that an automobile would travel. He was doing this because there is no ditch along the county road between his home and County Road 44. In some places there is a shoulder, but in other places there is not. Even where there is a shoulder, mailboxes and tree limbs extend into the shoulder in some places and guy wires for utility poles extent into the shoulder in other places. But, for at least 50% of the distance between his house and County Road 44, there is enough of an unobstructed shoulder to allow him to drive on it, either entirely or partially. In the particular area where he was observed by Officer Larson, it would not have been possible for him to drive entirely on the shoulder, but he could have driven at least partially on the shoulder, at the right

hand edge of the driving lane. But he was not doing this – he was driving right down the middle of the driving lane. Officer Larson observed that he was driving “at a good clip,” although she did not have radar or other speed measuring devices available to determine exactly how fast he was going. But by going down the center of the automobile lane, he was able to go faster than he would have been able to go had he dodged in and out of the right-hand portion of the automobile lane to avoid mailboxes, tree limbs, etc. In other words, he would not have been able to go as fast as he was going had he attempted to minimize his encroachment on the main driving lane.

I have reviewed the statute that governs the operation of ATVs on county roads, Minn. Stat. § 84.928, and find no exception that would invalidate the citation issued by Officer Larson. Had Mr. Stoneburner been operating in the extreme right hand edge of the driving lane, he could claim that subdivision 1(b) protected him because he was avoiding obstructions and no other method of avoidance was possible. But that defense is not available to him, given the fact that he was going down the middle of the driving lane.

Subdivision 1(d) does not protect him, because this was not an emergency situation and because automobile travel was a practical alternative.

In sum, I find that Officer Larson operated within the law when she exercised her discretion to issue a citation to Mr. Stoneburner. It was a late Saturday afternoon in August, there was “lots of traffic” on the road (which provides accesses for a number of lakeshore homes), and Mr. Stoneburner was not making an effort to minimize his encroachment on the roadway. Under the circumstances, this citation should be affirmed.

This is a recommendation, not a final decision. The Commissioner of Natural Resources will make the final decision in this matter. Before making his final decision, the Commissioner must wait for at least five days and afford Mr. Stoneburner an opportunity to comment to the Commissioner on the recommendation, and the Commissioner must consider his comments.

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I am closing our file, and returning the record to you. I should note that the hearing was tape-recorded, and a copy of the tape may be obtained from Sandra Haven of our office, whose telephone number is: 612-341-7642.

Sincerely,

S/ Allan W. Klein

ALLAN W. KLEIN
Administrative Law Judge

Telephone: 612/341-7609

AWK:cr

cc: Conservation Officer Kathy Larson
Keith Stoneburner
Pat Watts